



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 24, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by the Milwaukee Early Care Administration to recover child care assistance, a hearing was held on September 15, 2015, by telephone.

The issue for determination is whether petitioner failed to report that the father of her children lived with her.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: [REDACTED]  
Milwaukee Early Care Administration  
1220 W. Vliet St. 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. In 2014 and early 2015 petitioner received child care assistance for her two children. She reported consistently that the children's father did not live with her.
3. In January, 2015 the agency investigated petitioner's household after receiving a report that the father gave petitioner's address to the child support agency.

- [REDACTED]
4. The father used petitioner's address for employment purposes. He used her address also with the Division of Motor Vehicles. In July, 2014, he applied for FoodShare, reporting that he lived alone at petitioner's address; he did a FoodShare review in December, 2014 using petitioner's address.
  5. The agency reviewed the father's work history. For all of the time period April, 2015 through January, 2015, he was unemployed. If he lived with petitioner she would have been ineligible for child care during that period.
  6. By a notice dated August 17, 2015, the agency informed petitioner that she was overpaid \$11,637.42 in child care assistance on the basis that the father of the children was in her home and was not working, claim no. [REDACTED]

### DISCUSSION

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Admin. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Admin. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); Child Day Care Manual, §§1.4.8 and 1.5.0. If both parents are in the household both must be working or attending W-2 activities. Wis. Admin. Code, §DCF 101.26(1). The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, §2.1.5.1.

The sole issue in this appeal is the whereabouts of petitioner's children's father. Clearly he used petitioner's address as his own. Petitioner testified that she allowed him to use her address because the only times he ever saw his children were when he stopped to pick up his mail. She did not know where he actually stayed.

I have been conducting hearings for over twenty years, and I would be a rich man if I were paid \$10 every time I heard a mother of a supposedly absent father explain that she let the father use her address because he did not have a stable address to use. Such generosity from a person receiving welfare benefits premised on the father being absent has always struck me as at best foolish, and more likely as evidence of fraud. Furthermore, there almost always is additional physical evidence tying the father to the household – often the father answers the door when an investigator knocks, neighbors report that a couple lives in the home, or the mother tells the child support agency that he lives with her while telling the welfare agency that he does not live with her. Nevertheless, it is always possible that the mother is naïve and truly believes that allowing the estranged father to use her address makes it more likely that he will see his children.

[REDACTED]

In this instance I conclude that it is not proven that the father lived with petitioner. While it is obvious that he was using her address, and she allowed him to use her address, she testified that he did not live with her and rarely saw the children. There is nothing in the evidence to rebut that testimony. There is no evidence that he spent time in petitioner's home or that petitioner told anyone that he lived with her. It would not take much to convince me otherwise, any snippet of evidence tying the father to the residence other than as a mailing address, but there is none present.

That the father used petitioner's address to apply for FoodShare actually bolsters petitioner's credibility. If the father and she were working together to obtain benefits while alleging him to be out of the home, it would have been either the height of brazenness or of foolishness to have him apply at the same address. He might have committed fraud when he applied for FoodShare reporting that he lived at the same address as petitioner, but I cannot tie petitioner to that fraud. I thus will order that the overpayment be rescinded.

### **CONCLUSIONS OF LAW**

The fact that the father of petitioner's children used petitioner's address as a mailing address is insufficient to prove that he lived with petitioner without other evidence tying him to the home.

**THEREFORE, it is**

### **ORDERED**

That the matter be remanded to the agency with instructions to rescind overpayment claim no. [REDACTED] against petitioner, and to cease recovery of it. The agency shall take the action within 10 days of this decision.

### **REQUEST FOR A REHEARING**


You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

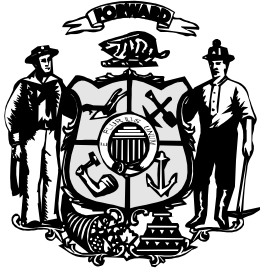
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

  
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 24th day of September, 2015

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\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 24, 2015.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit  
Child Care Fraud  
[REDACTED]